

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

MARBLE MAGICIAN, INC.

and

Case No. 29-CA-25993

RODRIGO ESPEJO, An Individual

*Emily De Sa, Esq., Brooklyn, NY,
for the General Counsel.
Michael Shlapak, President and Owner,
for the Respondent.*

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based on a charge and a first amended charge filed by Rodrigo Espejo, An Individual, (Espejo) on December 5, 2003, and January 21, 2004, respectively, a complaint was issued on January 27, 2004 against Marble Magician, Inc. (Respondent).¹

The complaint alleges essentially that on about December 2, 2003 (a) the Respondent's employees including Espejo, concertedly discussed among themselves the possibility of speaking to the Respondent concerning safety issues and other terms and conditions of employment (b) the Respondent's employees concertedly complained to the Respondent concerning these matters (c) the Respondent's owner Michael Shlapak interrogated employees concerning their protected and concerted activities and (d) the Respondent discharged Espejo.

The Respondent's answer denied the material allegations of the complaint, and on March 30, 2004, a hearing was held before me in Brooklyn, New York.

Upon the evidence presented in this proceeding, and after consideration of the closing statements submitted by the General Counsel and the Respondent, I make the following:²

Findings of Fact

I. Jurisdiction

The Respondent, a domestic corporation having its principal office and place of business at 159 Hillside Avenue, Williston Park, New York, has been engaged in the manufacture,

¹ The Respondent's answer denied knowledge of the filing and service of the charges. The formal papers received in evidence establish that the charges were properly filed, and that they were served on the Respondent.

² After the hearing was closed, and within the time for filing briefs, the Respondent submitted a "closing statement". Thereafter, counsel for the General Counsel filed a motion to reject the closing statement. This will be discussed below.

installation and retail sale of natural stone tiles for home improvement. During the past year, Respondent derived gross annual revenues in excess of \$500,000, and purchased and received at its Williston Park facility, goods and materials valued in excess of \$5,000 directly from points located outside New York State. Based on the above, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Alleged Unfair Labor Practices

A. The Facts

1. The General Counsel's Evidence

Espejo began work as a marble and granite laborer for the Respondent in late August, 2003. There are about five production workers employed in the facility. The work of cutting and grinding marble, granite and stone products creates a dusty work environment. The Respondent had a system of air extractors which remove the dust from the air. Espejo stated that about one month after he began work, the air extractors broke. Michael Shlapak, the Respondent's president and owner, told the workers that replacement extractors were made in Florida and would not arrive at the facility for perhaps one month.

Apparently the workers labored in a dusty work environment without air extractors for two months at the time that Espejo complained about this condition on December 2.³ Espejo, who stated that he had a sinus condition, testified that he could not breathe in the shop even with a mask. Occasionally the workers had to go outside the facility in order to breathe. His face and the faces of the other workers were covered with dust.

Espejo researched the issue of the dangers of the materials he worked with, and learned that granite contains silica which could cause asthma and perhaps cancer after several years' exposure. He became frightened at this information and called the Occupational Safety and Health Administration (OSHA) and requested certain booklets.

On December 1, Espejo received four booklets and a poster from OSHA. The poster, in Spanish, informed employees of their rights under the law, and the booklets concerned the importance of having devices to protect the lungs, eyes and ears. OSHA also sent him a booklet entitled "Q's & A's for Small Business Employers" which outlines employer-employee cooperative efforts to improve safety and health in the workplace.

The Events of December 2

The following day, Tuesday, December 2, Espejo brought to work all the documents he received. During his ride to work that day with employee Ricardo Sandoval, the two men spoke about the conditions in the shop. The discussion included that the air extractors were not fixed, the shop was very dusty with no clean air, the workers had to breathe and eat amidst the dust, Espejo received electrical shocks on two occasions when water entered the electrical tools he worked with, employees had to lift heavy items with no back protection, and they worked with loud machinery which caused granite particles to hit them, with no ear or eye protection. Espejo also complained to Sandoval that the bathroom was black and filthy and had a sink with no running water. Sandoval told Espejo that he agreed that the dust was a problem, but warned

³ Espejo began work in late August, the extractors broke one month later in about late September, and Espejo was discharged for complaining about this condition in early December.

him that he should be careful as the other workers may be afraid to say anything about it because of fear of being fired.

During their one-hour lunch break that day, Espejo brought the OSHA documents to the lunch table and gave them to the three workers there, Naciso Garcia, Wilson Pena, and Jose Sorto. He spoke to them about the unsafe and unhealthy working conditions in the shop, including excessive dust. In this connection, Espejo told them that in doing research he learned that silica in the granite dust may cause asthma and cancer if the worker was exposed to it for a long time. He also mentioned that the workers were exposed to too much noise and lacked ear and eye protection, the bathroom had no door, was filthy and had no running water, and it was dangerous to work with electrical machinery and water at the same time.

Garcia, Pena and Sorto said that they did not like working under these conditions. Sorto said that his friend who worked at a similar job died from lung disease. Sorto mentioned that he himself was spitting blood, visited a physician and was told to "get out of the business." Espejo asked Pena what would happen to his family if he died. Pena, who also complained about the dust condition in the shop, replied that he did not want to be in that position. All three men asked Espejo if he would speak to Shlapak about these matters and Espejo said that he would. They encouraged him to do so, saying that "it should be talked about."⁴

Espejo testified that after lunch, everyone returned to work. At about 3:00 p.m., he asked Shlapak if he could speak to him about "some of the problems we have at work, relating to the health issues." Shlapak agreed, and Espejo asked the three employees to join them, and they did. Espejo gave Shlapak the five OSHA documents.

Shlapak briefly looked at the cover of the documents and put them on a table. Espejo told him that "we want to improve the place." Before Espejo could finish talking, Shlapak told him to "shut up", saying that he did not want to speak to him, and that he did not know anything. Espejo said that "we could work together." Shlapak then ignored him and asked the other workers why they did not come to him before then with their concerns about the dust. They responded that they had a problem with the dust, and asked what could be done to fix it. Employee Sandoval entered the shop and joined the discussion.

Shlapak then asked them what they wanted him to do about the situation. He said that he had two options. First, he could fix the extractors and retain the same system, whereby the air would be filtered through buckets of water. In that case, because this system was defective, the extractors would still blow a little dust inside the shop. The second option was to put the extractors outside the facility, which would also extract the heat from the shop, in which case the workers would be cold. Sandoval said that given those two options, the dust problem would remain the same. Shlapak said that he did not know what to do. Everyone then returned to work.

At the end of the workday, Sandoval gave Espejo an envelope which contained his day's pay, and told him that Shlapak terminated him because his "services are no longer needed." The normal payday is on Saturday. Later, Espejo called Shlapak and was told that he was "not the right person for this job."

Ten days after Espejo's discharge, the Respondent submitted an objection to his claim for unemployment insurance. The letter stated that Espejo was discharged for insubordination

⁴ Espejo testified that he spoke English much better than his co-workers.

and “rules violation,”⁵ and that “this employee constantly complained and caused fellow co-workers to have contempt towards him. He destroyed the good natured mood of others.”

2. The Respondent’s Evidence

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Shlapak has owned the Respondent since about 1988. He purchased a ventilation system in 2002, and it broke in about the summer of that year. It was repaired, and broke again in the summer of 2003. Shlapak emphasized that he sought to have healthy environment in his shop and had an interest in taking care of his workers. As an example, he explained that OSHA does not require that his shop have a ventilation system, but he utilized one anyway.

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Shlapak testified that at about 2:00 or 3:00 p.m. on December 2, Espejo stopped all the employees from working, saying “everybody stop.” The other workers were Garcia, Pena and Sorto. Espejo then “confronted” him, giving him papers from OSHA, and also documents concerning a new ventilation system costing \$200,000. At that point, Shlapak was “tired” of Espejo confronting him.

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Shlapak stated that he was most unhappy that, despite his (Shlapak’s) frequent lunchtime conversations with the workers, asking them if they had a problem, Espejo, during work time, tried to “stop the shop” and gave him “paperwork.” Shlapak admitted being “very upset about” Espejo’s bringing the dust situation to his attention since he already knew that it was a problem, especially since Espejo he “does not know anything about anything.”

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Shlapak admitted that Espejo said that he was “speaking for everybody”, that “employees didn’t have to work under these conditions, we shouldn’t have to do this, we shouldn’t have to do that.” Shlapak told him to “shut up.” Shlapak then asked the other employees who had gathered around if they had a problem. They replied that it was “a little dusty.”

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Shlapak stated that the three other employees had not confronted him regarding working conditions in the shop, since their approach had always been to inform him that something was broken and he would fix it. He stated that his workers have been employed a long time, and if there was a problem “we’re open and we talk to each other.” In contrast, according to Shlapak, Espejo attempted to have all the employees stop work, while demanding that they “shouldn’t have to do this, we shouldn’t have to do that.” Shlapak demanded that he “shut up,” saying no one wanted to hear him. Shlapak then asked the workers if anyone had a problem, and they said “it’s very dusty.” Shlapak replied “I know that, well what do you want me to do? You see I’m trying to fix it.” Shlapak then walked away from the men and they immediately returned to work. He estimated the work stoppage at three to five minutes.

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Shlapak testified that five minutes later, Pena and Sorto approached him separately and told him to fire Espejo as “he’s nothing but trouble.” They told Shlapak, “Mike, I swear to you, I knew nothing about this. This guy is problems.”⁶ Sorto said that Espejo “mentioned something about it during lunch.” Shlapak asked Pena if the dust situation was “that bad.” Pena said it was, and Shlapak said he knew that it was dusty. Shlapak then asked Pena “you don’t want to work?” to which Pena replied that he wanted to work, but “I just want to get the ventilation system fixed.”

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⁵ The Respondent has no written rules, and no explanation was offered as to what rule Espejo violated.

⁶ This last statement is contained in Shlapak’s pre-trial affidavit.

Shlapak then asked Sandoval if he knew anything about what Espejo had done, and also asked what he should do since Sandoval was Espejo's friend. Sandoval advised Shlapak to fire him since "he's trying to sue you." Shlapak told him to tell Espejo that he was fired, which he did. Espejo called Shlapak that night and told him that he would not "get away with this."

Shlapak disputes that Espejo could have any valid reason to complain about the conditions in the shop. As to the dust issue, OSHA inspectors had been at his shop on numerous occasions and have issued only one written violation, which was not related to dust. His answer to the dust problem is that the employees could simply open the garage door and the dust would leave the facility. Moreover, he stated that the employees are provided with eye and ear protection, and if the workers do not use it, that was their choice. Although Shlapak agreed with Espejo's description of the bathroom, he stated that the workers could use the bathroom in the showroom.

Shlapak had numerous complaints about Espejo, including that Espejo confronted him "every day with something different." Shlapak answered him by saying "who the hell are you to keep talking to me like this? You work for me, I don't work for you." Further, whenever Shlapak spoke to other employees, Espejo kept interrupting him, and Shlapak told him repeatedly to shut up, that he did not want to hear from Espejo. Shlapak called such behavior insubordination. Espejo denied complaining to Shlapak at any time prior to December 2.

Shlapak also contends that he discharged Shlapak because he was a "lousy worker", who created "havoc for everybody." Shlapak gave hearsay testimony that his other workers told him that Espejo did not want to work. Espejo credibly denied the assertions of poor work made by Shlapak, such as drunkenness, excessive lateness, laziness, and refusals to take out the garbage, but conceded being told by Shlapak that he should work faster. None of the allegations made by Shlapak was proven by credible evidence. In this connection, the Respondent's closing statement included, as attachments, a document from OSHA dated March 8, 2004, dismissing a complaint against the Respondent, apparently in response to a "whistleblower" complaint by Espejo, and a decision from the New York State Unemployment Insurance Appeal Board dated March 8, 2004, finding that Espejo was disqualified from receiving unemployment insurance because he was discharged for misconduct, including refusals to work, a bad attitude, and "attempting to focus his coworkers on what he alleged to be poor working conditions." ⁷The decision found that on December 2, Espejo "returned to work with a pronounced bad attitude, and none of the coworkers wanted to work with him. He began complaining about what he believed to be hazardous working conditions, and ceased working."

⁷ The closing statement was not served on counsel for the General Counsel. When I received it, I sent it to Ms. De Sa. Section 102.42 of the Board's Rules requires that the closing statement be served on all parties. Sec. 102.114 states that failure to serve the statement may be a cause for the rejection of the document but does not require the document's rejection. Inasmuch as the Respondent appeared *pro se*, counsel was ultimately served with the closing statement and responded to it, and no prejudice has resulted, I will not reject it. *Century Parking*, 327 NLRB 21, fn. 7 (1998). However, I do reject those parts of the closing statement which are not supported by record evidence. I also reject the documents attached to the statement, as they were not timely offered in evidence. Even if I were to consider the decision of the Unemployment Insurance Appeal Board, which has probative value but is not determinative, *Dynatron/Bondo Corp.* 324 NLRB 572, 585, fn. 54 (1997), the decision's finding of misconduct is not supported by the evidence received in this record.

Shlapak testified that he wanted to discharge Espejo in October, 2003, but did not do so because the office employees asked him to wait until after the Thanksgiving holiday because Espejo is married and has a child. Against his “better judgment”, Shlapak decided to retain Espejo. Then, he stated, following Thanksgiving, Espejo confronted him about the dust and OSHA matters, and he decided to fire him since “enough is enough.” In this connection, the Respondent’s closing statement concedes that from the first week of Espejo’s employment, Shlapak observed that he was “very lazy and just wanted to talk instead of working,” but that Shlapak “let it go” for two weeks because it was hard to obtain employees in this industry. As time went on “he just got worse and would not do what he was told.”

Analysis and Discussion

Section 7 of the Act gives employees the right “to engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of those rights. To be protected under the Act, the employee’s activities must be “concerted” and “protected.” Any activity by a single employee may be protected if it seeks to initiate, induce or prepare for group action. *Prill v. NLRB (Meyers Industries)*, 835 F.2d 1481 (D.C. Cir. 1987). This protection includes discussions about safety related issues between two or more employees. *Transit Management of Southeast Louisiana*, 331 NLRB 248, 249 (2000).

It is clear that Espejo engaged in protected, concerted activity by speaking to his co-workers at lunch about the working conditions in the shop, specifically, the failure of the Respondent’s ventilation system to expel the dust generated by the cutting operations. He continued those concerted activities by urging his fellow employees to join him in speaking to Shlapak about those conditions, and by “speaking for everybody” in complaining to Shlapak about their working conditions. Thus, Espejo “engaged in concerted activity for the purpose of mutual aid and protection; specifically, to improve health and safety conditions in the shop.” *Systems with Reliability, Inc.*, 322 NLRB 757, 760 (1996). The fact that the employees were urged by Espejo to join him in speaking with Shlapak does not constitute a work stoppage done for the purpose of engaging in a strike, but to engage Shlapak in a short, three to five minute discussion about the health and safety conditions in the shop. Even if the work stoppage was for the purpose of protesting unsafe conditions or a refusal to work because of the dusty conditions, it would be protected. *Palco*, 325 NLRB 305 (1998).

Pursuant to *Wright Line*, 251 NLRB 1083 (1980), the General Counsel must prove that Espejo’s protected concerted activity of speaking to his co-workers, and complaining to Shlapak about safety issues was a motivating factor in his discharge. If the General Counsel makes such a showing, the burden then shifts to the Respondent to prove that it would have terminated him even in the absence of his protected concerted activities.

The evidence establishes, and I find, that Espejo’s concerted activity in speaking to his co-workers, his giving the OSHA documents to Shlapak, and his complaints to Shlapak that the dusty working environment be remedied, were motivating factors in the Respondent’s decision to discharge him. The discharge was effectuated in the middle of the pay period only about two hours after Espejo’s confrontation with Shlapak. Shlapak’s anger at Espejo for complaining about the dust is clearly shown in Shlapak’s refusal to speak with him, accusing him of not knowing anything, and in Shlapak’s admission that he knew there was a dust problem. This demonstrates that Shlapak was aware of the dust problem and did not want to be told by Espejo that it had to be fixed. He clearly considered Espejo’s complaints “insubordination” as set forth in the Respondent’s answer to the unemployment insurance claim, which also asserted that Espejo “constantly complained and caused fellow co-workers to have contempt towards him. He

destroyed the good natured mood of others.” These assertions support a finding that Espejo was discharged solely because he concertedly complained about safety conditions at work.

Shlapak also apparently felt betrayed by his long-term workers for joining in Espejo’s complaint, and not informing Shlapak of the dust situation. This finding is supported by Shlapak’s affidavit which stated that after the confrontation, Pena and Sorto swore to Shlapak that they knew nothing about Espejo’s interest in confronting him about the dust problem. It is instructive that, after the confrontation, when Pena told Shlapak that the dust situation was “that bad”, Shlapak asked him “you don’t want to work?” This is an implied threat that if Pena was so concerned about the dusty environment he did not have to work there, and supports a finding that Espejo was discharged for making the same complaint.

That the Respondent has only received one written violation from OSHA which was unrelated to dust, despite numerous inspections, is immaterial. *Systems with Reliability*, above, at 760. What is material is Espejo’s right to complain to the Respondent about work conditions which he believed to be unsafe.

The Respondent’s numerous complaints about Espejo’s performance are not supported by the evidence. If anything, the record supports a finding that Shlapak considered Espejo to be a poor worker from his first week of employment in late August, 2003, but nevertheless tolerated his shortcomings and misconduct for three months because it was hard to get workers in the industry. Despite that Espejo “got worse and worse and would not do what he was told,” the Respondent nevertheless permitted him to remain employed, without any discipline being imposed, until he engaged in the protected, concerted activity of complaining about his work environment. *C.P. Associates, Inc.*, 336 NLRB 167, 174 (2001). The timing and speed with which the discharge occurred, in the middle of the pay period immediately after Espejo complained about the dusty work conditions, support a finding that Espejo was discharged because of his concerted complaints, and not because of his alleged poor work.

This finding is supported by Shlapak’s consultations with his four other workers immediately after the confrontation. They all advised Shlapak to fire Espejo, not because of his poor work or because they allegedly refused to work with him, but because “he’s nothing but trouble, this guy is problems, and he’s trying to sue you.”

I accordingly find and conclude that the Respondent has not met its burden under *Wright Line* of proving that it would have discharged Espejo even in the absence of his protected concerted activities of discussing with his co-workers their working conditions, and complaining to Shlapak about such conditions.

The complaint also alleges that Shlapak unlawfully interrogated employees by asking employee Sandoval on December 2 whether he knew anything about what Espejo had done. I find that in asking that question which was after his confrontation with Espejo, Shlapak was inquiring as to Espejo’s concerted activities of speaking to other employees concerning their working conditions and the dusty environment, and also his contact with OSHA.

A question constitutes unlawful interrogation if, whether under all the circumstances it reasonably tended to restrain, coerce or interfere with rights guaranteed by the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984). This question of Sandoval came on the heels of Shlapak’s confrontation with Espejo and was immediately followed by Shlapak’s unlawful discharge of him for engaging in protected concerted activities. The coercive nature of the question is clearly seen in employees Pena and Sorto believing that they had to immediately approach Shlapak after his confrontation with Espejo and swear that they knew nothing of

Espejo's plans to confront him about the dusty working conditions. Immediately after those conversations, Shlapak called Sandoval and asked whether he knew anything about what Espejo had done. Thus, Shlapak learned from the entire work force what they knew about Espejo's interest in correcting the dusty condition prevailing in the shop. I accordingly find that Shlapak's question to Sandoval violated Section 8(a)(1) of the Act. *Super One Foods*, 294 NLRB 462 (1989).

Conclusions of Law

1. By interrogating employees concerning what they knew about other employees' protected, concerted activities, the Respondent violated Section 8(a)(1) of the Act.

2. By discharging Rodrigo Espejo because he concertedly complained about safety issues and other terms and conditions of employment, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondent, Marble Magician, Inc., Williston Park, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected, concerted activities.

(b) Coercively interrogating any employee about other employees' protected, concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

5 (a) Within 14 days from the date of the Board's Order, offer Rodrigo Espejo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

10 (b) Make Rodrigo Espejo whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the Decision.

15 (c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

20 (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

25 (e) Within 14 days after service by the Region, post at its facility in Williston Park, New York, copies of the attached Notice marked "Appendix."⁹ Copies of the Notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the
30 Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since December 2, 2003.

35 (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Steven Davis
Administrative Law Judge

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⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX
NOTICE TO EMPLOYEES**

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge or otherwise discriminate against any of you for concerted complaining about safety issues.

WE WILL NOT coercively question you about what you know about other employees' protected, concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Rodrigo Espejo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Rodrigo Espejo whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Rodrigo Espejo and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

MARBLE MAGICIAN, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201

(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862.